

US v Melvin Colón

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Mitchell Dinnerstein
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RE: Melvin Colón—Social Work Report

September 9, 2013

Dear Mr. Dinnerstein:

In accordance with your request, I prepared the following mitigation report on behalf of your client, Melvin Colón, known as “Melly.” This report is intended to be used at the time of sentencing for the crimes for which Mr. Colón was found guilty. In preparing this report, the following was done:

Client Interviews:

- 14.5 hours face-to-face interviews with Melvin Colón at the Metropolitan Detention Center.

Collateral interviews:

- 16 hours with Melvin’s mom, Edilia Quian, and other members of his nuclear and extended family
- 8.5 hours with Community members and Juvenile Secure Center staff

Review of Life History Records, approximately 1,000 pages:

- Arrest history (CRIMS): Melvin Colón
- Brookwood Secure Center
- Crossroads Juvenile Center
- Downstate Correctional Facility
- Edgecombe Correctional Facility
- Goshen Secure Center
- Kings County Hospital: Melvin Colón Sr.
- Lincoln Medical and Mental Health Center hospital inpatient and outpatient: Melvin Colón Sr.

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- North Central Bronx Medical Records: Edilia Quian
- Office of Family and Children's Services (OCFS)
- OCFS medical records
- Parole Revocation Defense Unit, The Legal Aid Society
- Spofford Juvenile Center
- Truman High School transcript
- Ulster Correctional Facility
- Ulster Correctional Facility Medical Records

INTRODUCTION

Melvin Colòn was nineteen years old during the instant offenses. He is the youngest man charged in his group of co-defendants. During his childhood, Melvin struggled with chaos and loss: his father's inability to parent due to his physical and cognitive limitations, the violent deaths of friends in his neighborhood, the death of his supportive grandfather, and essentially being raised by a mother, that although well-meaning, lacked the ability to protect Melvin from the violence and dysfunction of the neighborhood.

Before Melvin turned eight years old, he endured, and was affected by, his father's multiple near-death experiences. Young Melvin, the son, became, in reality, the father. At ten years old, Melvin was the man of the house. Melvin had promise based on his talents, but sadly could not overcome the difficulties of his losses and violent environment.

Throughout his adolescence, Melvin witnessed violence, protected his baby brother as best as he could, and attended adolescent friends' funerals. He played basketball. He earned his GED. As a bright boy on the street, raised by juvenile facilities, Melvin's adolescence was conditioned by where and when he was born. His upbringing in the "Brown Building"¹ created a canvas on which he saw his future.

¹ The "Brown Building" was the street name for the building located at 280-300 East 161st Street, Bronx, New York. While it is near the Melrose and Jackson Houses, it is actually on a commercial street directly across the street from the Bronx Family and Supreme Courts.

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MELVIN'S UPBRINGING IN THE SOUTH BRONX

On April 19, 1992, Melvin was born at North Central Bronx Hospital to twenty-year-old Edilia Quian and twenty-five-year-old Melvin Colòn, Sr. into the triptych legacy of poverty, crack, and violent crime.

“Compared to residents citywide, persons living in the Bronx have higher rates of poverty (27.9%, versus 18.6%), unemployment (11.1%, as opposed to 8.2%), and earn the least annually (with a median household income of \$33,794, compared to \$50,173). When compared to other blacks and Hispanics citywide, those living in community districts in the South Bronx have some of the highest rates of poverty and unemployment in New York City.”²

Melvin's family exemplifies those statistics. When Melvin was born, Ms. Quian received \$234 public assistance a month, including Aid to Families with Dependent Children (AFDC), food stamps and Women WIC.

In 1990 there were 653 murders in the Bronx, and 9,538 felony assaults, including shootings.³ In addition to the researched statistics above, the word expressed by Goshen Counselor Phyllis Brunson-Sutton foretold what it is like to grow up in the South Bronx: “you either end up in a cell or a cemetery.” Ms. Quian explained, “When Melvin was growing up there were no outlets; there were no community centers or recreation. It was up to the parents to help their children. She continued, “[As a parent] if that's where you fail, consequently youths fell into the crack.” At this time, children who grew up in and around the Melrose houses plummeted into the chasm of the expanding crack epidemic.

² US Census 2005-2009 in *Institute for Children, Poverty and Homelessness*, July 2011, “On the Brink: Homelessness a Reality in the South Bronx.”

³ Police Department , City of New York, Compstat, Volume 20, Number 8
http://www.nyc.gov/html/nypd/downloads/pdf/crime_statistics/cspbbx.pdf

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In kindergarten, as Melvin learned to spell his name and made friends, his future, like many of his classmates,⁴ would be spent in locked secure facilities. In addition, many of his classmates would have died. Melvin spent his life from fourteen to nineteen in secure facilities except for about five months.

While Ms. Quian sadly stated that she believed that the Brown Building⁵ provided better security than the nearby projects, it provided no better security once she or her children walked out the door of the apartment building. Whatever safe environment she was trying to provide within the Brown Building, was swept away the moment she or her children left the building. Violence was pervasive in her community as Melvin grew up.

Based on her personal upbringing and her hopes for her children to survive in this raw environment, Ms. Quian tried to raise Melvin tough and uncompromised. She disclosed through tears to the undersigned, “I failed”. Ms. Quian’s childhood, leading to Melvin’s demanding upbringing, follows.

MELVIN’S MOTHER: EDILIA QUIAN

Edilia Quian was raised in the South Bronx. She was known as “little sister.” Local drug dealers gave pre-teen Edilia money to go to the movies to get her off the streets. They would tell her that the lifestyle in which they were entrenched was not for her. When she approached them, while they were selling drugs, they told her to go away.

The local dealers used their drug selling profits to take Edilia and friends on bus trips to Great Adventure and Hershey Park. It was clear that the dealers were trapped. They were

⁴ U.S. Department of Justice, Bureau of Justice Statistics, Revised 2/9/12, Appendix 14

⁵ The Brown Building was not part of the New York City Housing system. Instead it was a federally subsidized Section 8 housing which provided their own security system with a hired security officer at the building’s entrance.

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successful in “gaming” the system. They were able to support themselves free of the poverty of the neighborhood.

Ms. Quian believes, “The crack epidemic took over everyone in the late 80’s to early 90’s. At that time there were not many kids with a strong family.” The message Ms. Quian received was that the older siblings selling drugs “didn’t want their siblings to take the same route”. Still, the drug dealers did not provide any positive alternative to this lifestyle. Where, and how can, one instill hope in a whole generation of children growing up with so little?

Where certain children see that their lives lack value, where their lives are disposable and where they are often viewed as suspects by the police when they are doing nothing wrong. Recently they have learned again that they can be “justifiably” killed for walking from a candy store as in the *Zimmerman* case in Florida. President Barack Obama has even weighed in on this issue. He recently said after the *Zimmerman* verdict that African Americans are often perceived as the perpetrators. He passionately stated, “There are very few African American men in this country who haven’t had the experience of being followed when they were shopping in a department store. That includes me. There are very few African American men who haven’t had the experience of walking across the street and hearing the locks click on the doors of cars. That happened to me—at least before I was a Senator. There are few African Americans who haven’t had the experience of getting on an elevator and a woman clutching her purse nervously and holding her breath until she had a chance to get off. That happens often”.⁶

Obama does not address the fact that African American males are incarcerated at a rate nearly seven times as high as that of white males.⁷ He does not address how to give black

⁶ Obama’s press conference July 12, 2013.

⁷ US Department of Justice Bureau of Justice Statistics 2010, revised 2.9.12.

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children alternatives to either death or jail or to provide them hope that this society is for them too.

Ms. Quian recalled that while she entered her twenties, ten of her friends were in jail and about half of her friends were “gone.” She sadly discussed a friend receiving a sentence of twenty-five years when he was eighteen. She reported her first love received a life sentence. Two of Ms. Quian’s friends were killed in 1988-1989. She revealed, “This environment raised African American and Hispanic men to correctly believe the only outcome [of being raised in the Melrose Houses] was death or jail”. She sadly discussed the death of her friend, Raul, at the age of twenty-one. Raul survived a stabbing at the age of eighteen. He became homeless and slept on the train. At the age of twenty-one he was shot seventeen times in the head.

As Ms. Quian spoke briefly and sentimentally about being raised in The Brown Building, she smiled remembering that there were dances, benches in the courtyard where tenants socialized, a basketball court where youth learned a team sport, and picnics in the back of the building. As drug use escalated, new management took over. Ms. Quian explained, “New management hired security guards who appeared as drill soldiers, not even allowing tenants to stand in the lobby”. New management made the social activities disappear, as the benches were pulled out, allegedly as a security measure. This turned the area into a desolate playground (Exhibit 1). The basketball courts became vacant. The security desk in the lobby turned into a Plexiglas enclave following a tenant shooting when Melvin was ten years old.

Melvin’s mother did her best. Ms. Quian is a loving, caring, insightful person. She holds onto a strong foundation from her parents, especially her father.

At 5’ 3” 110 pounds, Ms. Quian is a strong woman, walking in the streets with her chest out and her head held high. After each home visit performed by the undersigned, Ms. Quian put her coat on without discussion, and walked the undersigned to the train station. Ms. Quian, a

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dark-skinned woman walking the undersigned white, middle aged woman down the block to the train station silently but strongly acknowledged the danger of the area.

Young boys and older gentlemen in the streets smiled, nodded, and tipped their hats at us as she walked by. The undersigned felt safe with Ms. Quian.

MELVIN'S DAD: MELVIN COLÓN Sr.

Melvin Colón, Sr. was born in Orocovis, Puerto Rico. Orocovis, known as “the Heart of Puerto Rico,” due to its central island location, bore agricultural exports: coffee, fruits, and tobacco. As a child, Melvin Sr. was physically abused. He was forced to kneel on uncooked rice and was whipped with an extension cord. As a child, Melvin Sr. didn't tell anyone of the abuse. He chose not to seek help due to his shame. Instead, he used drugs as a form of medication. This resulted in psychotic episodes in his adulthood.

At the age of nine, Melvin Colón Sr. moved to the United States with his mother, Nilda Colón. He didn't have a relationship with his father, the abuser, which led him to want to be a “real father”. That hope was shattered even before Melvin was born.

Right before Melvin's birth, Melvin Colón, Sr. barricaded himself in his room for about a month, deteriorating both physically and psychologically. In his bathroom, he punched the mirror, shattering his image. Mr. Colón's mother called the police who took him unwillingly to Lincoln Medical and Mental Health Center. He lay on a stretcher handcuffed exhibiting poor grooming and hygiene. Melvin's father said, “I wanna (sic) die” (Exhibit 2 -- Lincoln Medical and Mental Health Center, p. 13). He was given several diagnoses by clinicians, but the common thread was psychosis: a delusional break from reality (Exhibit 3 Lincoln Medical and Mental

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Health Center 7, 9, 41, 55). He was diagnosed with psychotic disorder⁸ when Melvin was one day old. He was then diagnosed with Schizophreniform disorder⁹. Mr. Colon Sr. was preoccupied internally with ideas that people in his neighborhood will try to harm him; terrorists are poisoning his food; the police brought him here because he got upset as they were making a movie of him filming his reality; he hears voices calling his name; he stated the world would end soon; and people were playing with his mind (Exhibit 4 --Lincoln Medical and Mental Health Center, p.16, 50, 100, 127,).

On April 20, 1992, one day after Melvin was born, Melvin Sr. pleaded to be released from the psychiatric hospital. He felt caged. He was released from the hospital May 13, 1992. Melvin Sr. met his first child, Melvin Jr, when he was three weeks old.

Of course in infancy, Melvin was unaware of the events leading to his father's psychiatric hospitalization and the challenges his dad faced following discharge. Of course, it did adversely affect the family dynamic.

Melvin Sr. was afraid to hold five pound five ounce baby Melvin. Further, Ms. Quian was not sure if Melvin's father could gently hold Melvin following his violent behavior. The untimely coinciding of Melvin Sr.'s release from the psychiatric ward, and Melvin's birth, were emotionally draining for twenty-year-old Ms. Quian. She understood that she was the caretaker

⁸ Psychotic disorders are severe mental disorders that cause abnormal thinking and perceptions. People with psychosis lose touch with reality. Two of the main symptoms are delusions and hallucinations. Delusions are false beliefs, such as thinking that someone is plotting against you or that the TV is sending you secret messages. Hallucinations are false perceptions, such as hearing, seeing, or feeling something that is not there (Medline Plus).

⁹ Schizophreniform disorder is diagnosed when symptoms of schizophrenia are present for a significant portion of the time within a one-month period, but symptoms are not present for the full six months required for the diagnosis of schizophrenia. The symptoms of both disorders can include delusions, hallucinations, disorganized speech, disorganized behavior, and social withdrawal (WebMD).

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of both her husband and child. She accepted this reality. Ms. Quian firmly stated that she took care of her husband and child because “I had to do it, so I did it.”

During an interview with the undersigned, Mr. Colón, Sr., illustrated his feelings of being stigmatized by referring to his diagnosis as “crazy.” He was tangential; he changed the subject and interrupted the undersigned to escape answering a question or to finish a tangent. He also illustrated his paranoia.

Mr. Colón further said that in 1992 he was laid off from a job. Marital discord followed. As his life spiraled downward, Mr. Colón Sr. left Edilia and lived with his mother, Nilda Colón. He reported his mother practiced Voodoo, which Mr. Colón Sr. suggested may have led to his ability to read his friends’ minds, and experience audio and visual hallucinations. He was in actuality seeing and hearing things that weren’t there.

Despite all of this, Mr. Colón, Sr., stated that the most important thing for him now was to be a positive father figure for Melvin. While he tried to do his best, two years later, Melvin’s father was a victim of violence which led to him suffering additional trauma.

In 1994, when Melvin was two years old, Melvin Sr. was approached by masked men in his neighborhood. As he was deciding what to do, Melvin Sr. felt a cold hard metal pressed against his head. He pushed the gun away and gave away his property without any further discussion. As Mr. Colón, Sr., was fleeing, one of the armed men told him he had to leave his trademark and shot Mr. Colón in the back. The gunshot wound to his back through his stomach resulted in a liver laceration and intestinal perforation. (Exhibit 5 --Kings County Medical Records, p. 9).

The night of the shooting, Melvin Sr. went to the hospital for extensive treatment. Melvin’s mom told Melvin that his father had been shot. Finally arriving home from the hospital

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Melvin Sr. was a shadow of his former self. Melvin Sr. had to learn how to walk again. Melvin Sr. nervously sat next to Melvin fearing that Melvin would jump on him and cause pain to his wounds. Ms. Quian revealed, “Melvin felt distance from his dad as he could not show him that love. Melvin’s father loved him as much as he could.” Again, while four years old is a young age to understand his father being a victim of a gunshot wound, there was considerable confusion for young Melvin. Following Mr. Colon Sr.’s psychotic break, his ability to parent was even more affected by resultant physical traumatic limitations. Once again, Ms. Quian became Melvin’s mom and dad. She repeated, “I was taking care of two kids.”

In October 1999, Melvin was seven, and Mr. Colon’s Sr. was progressing and became a more significant participant in his relationship with his son. As the bonds began to grow, another trauma occurred.

Mr. Colon’s Sr. was hit by a van while riding his bicycle in Brooklyn (Exhibit 6 --Kings County Medical Records, pp. 46, 139). Melvin was seven years old. The driver left the scene. The hospital called Ms. Quian, and told her that her husband was hit by a van. Hospital personnel thought he would not survive. The van was going at an excessive rate of speed. Hospital staff told Ms. Quian to get to the hospital immediately.

Mr. Colón Sr. was intubated, suffering from chest, facial, and neck trauma. His shoulder, scapula, and ribs were fractured. A chest tube was inserted (Exhibit 7 Kings County, p. 9).

Mr. Colon Sr. needed plastic surgery and physical therapy. He had to accept his new, more limited, self. Naturally, this change continued to adversely affect the family dynamic. Melvin again wanted to know why his father was not there. Before Melvin turned eight, his father had three significant medical and mental health traumas and now was even more seriously impaired to properly father his young son.

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What may be most significant for Melvin from the father's illness, victimization and accident, is the need for him to withdraw as a defense mechanism to cope with his loss.

However, Melvin was fortunate to have his grandfather, his mother's father as a substitute for his father. Unfortunately, when Melvin turned fourteen, his grandfather died.

MELVIN'S JOURNEY INTO ADOLESCENCE: "Hear a shot and drop"

Ms. Quian's experience growing up near the Melrose Housing Project led her to feeling Melvin and Malik were never safe. Ms. Quian would regularly walk through Courtlandt Avenue, where the projects are, to check on the neighborhood's kids, hers and the ones she knew. Her perception was that police officers were often harassing the kids. It was Melvin's regular experience, as he and his friends were walking down the block, police officers would hop out of a car and search pedestrians frequently. That routine stop and frisks led to Melvin feeling like a criminal following the non-criminal behavior of walking down a street. He felt like a suspect.

As Melvin reached adolescence, Ms. Quian slept on the couch under the window facing the street, near the front door so she could hear when Melvin came in.

One day Ms. Quian looked out the window and saw Melvin in the middle of the street surrounded by a group of threatening teenagers. Ms. Quian remembers, "[When me and Melvin Sr.] ran downstairs into the street, Melly yelled at us, as if he was the parent, 'Get upstairs! I don't want you shot!'"

While Melvin survived, his peers started to die. During adolescence Melvin had four friends fatally shot and one other stomped to death. He saw his friends on life support, and saw them dead on the street. Melvin shared, "when you grow up in this neighborhood you learn you must protect yourself. People are dying all the time. Being born into the South Bronx is a start but you run into shit."

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Walking into the Brown Building for a family meeting on August 1, 2013, the undersigned was greeted by a flyer announcing the “Life Celebration” for a 23-year-old tenant who was fatally stabbed at the store down the street. He was a friend of Melly’s and Malik’s. Ms. Quian sadly, yet matter-of-factly, discussed this kid's death, referring to him as "another one".

Adolescents in suburbia learn about “stop, drop, and roll” during a fire alarm. Hearing gunshots on the street in South Bronx, Melvin learned the expression, “hear a shot and drop.”

Melvin’s unsolicited upgrade to the man of the house, due to his father’s diminished capacity, coupled with his acknowledgement that attending repeated funerals was the norm, and seeing people murdered in the street, led to Melvin’s effort to redefine himself. He had to find a way to survive in his world.

MELVIN’S SANCTUARY: THE BASKETBALL COURT

The Melrose Housing Project with the collection of young males had a basketball court. Here Melvin shined and actually was recruited to play basketball in a youth Catholic league.

St. Angela Marici Catholic School in the South Bronx had a basketball team coached by Robert Young and Bill Coachman. The team was for children in grades sixth through eighth. Melvin did not go to this school,¹⁰ but the coaches welcomed him as they recognized his basketball talent. Practice was twice a week for kids learning and excelling in a team sport.

As basketball coaches and mentors, Coaches Young and Coachman’s goals were to keep kids off the streets and be positive male role models many didn’t have. They were serious basketball coaches who tried to mentor Melvin on and off the court. While Coach Young didn’t

¹⁰ Melvin went to the local public school. He was clearly under-motivated there. He was bright, though. (See Woodcock Johnson scores, Exhibit 8 which were taken when he was incarcerated in a locked security facility. There, because he seemingly was more highly motivated, Melvin showed a marked improvement from 2008 to 2009 where he scored above grade level.) In an ideal world, Melvin would have gone to school in a “gifted and talented program”. Unfortunately, those programs were not made available to children who lived in the South Bronx.

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want to blame anyone for kids' negative behavior, he believed many kids didn't have positive male role models. He believes coaching and mentoring were important, as Coach Young said, "these kids need positive reinforcement and it takes a village to raise a child". However, the village was squandered by the crack epidemic.

Coach Young discussed the basketball court as being a safe place; there was "never a gang problem. They were just kids on the court". They traveled all over the Bronx, in their CYO league, and AAU summer league. Melvin was one of the captains on the team. With regard to the instant offenses, Young quietly stated, "[I] never saw it coming with Melvin".

When the basketball program started, it was based on kids just wanting to play. As they grew up, the program helped kids get ready for academic Catholic high schools which also had strong basketball programs as well as a more disciplined environment. A very few actually attended college following high school. Informal group therapy began covering topics relevant to adolescence: girls, drugs, streets, and sports. Coach Young stated sadly he learned Bronx youth don't value their own life as they re-evaluate their sense of mortality. These casual conversations often turned intense. A common theme revolved around the kids being born to the streets where the choices were often jail or an early death.

The basketball court meant the world to Melvin. Within a nonviolent atmosphere, it became a safe oasis. It was a new world, in which he received acclamation and support.

Coach Young testified during Melvin's trial on November 15, 2012. He passionately discussed his memories of Melvin:

During basketball practice we talked with kids on the court...anything they want to talk about, we sit and listen. We try to help them out, and just be there for them. Melvin played for us from probably the sixth, seventh grade.

We found him...in our program we're allowed to have...the Catholic school students, and we're allowed to have three kids from the outside play with us, and riding by and seeing kids play ball, we just ask them...'Are you interested in playing

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on an organized team?’ And [Melvin] just happened to be one of the kids that...we brought to the program.

I had no problems with [Melvin] at all. Very respectful to the coaches, to the other players. We actually made him one of the captains [due to his] leadership, his ball playing skills.¹¹ Please see the banner that they won for the year’s Championship as well as a photograph of Melvin’s basketball trophies (Exhibit 9).

Coach Bill Coachman¹², another basketball coach and mentor in Melvin’s life, spoke with the undersigned on the phone. Coach Coachman became a volunteer basketball coach with Catholic Youth Organization. He is in charge of the basketball organization. He knew Melvin for about two years. Coach Coachman reported that Melvin was a good player. He was placed on Junior Varsity in 6th grade, Varsity in 8th grade. Coach Coachman knew about the danger living in the Melrose Houses. As Coach Coachman ended the interview, he disclosed to the undersigned, with regard to hearing about Melvin’s case, “I felt like I lost a son.”

‘WELO

Melvin’s maternal grandfather was Ramón Quian. In Spanish, the word grandfather is “Abuelo.” Melvin called his grandfather “Welo,” the endearing term short for “Abuelo.” Born in Matanzas Province, Cuba, Welo was a well-known musician who performed with a band in his native town before relocating to Havana, Cuba. He joined another band, and in the 1950's he moved to Mexico. He then worked with well-known musicians showing his rise to fame. He appeared in three movies. In 1962 he moved to New York, and began working with yet another band. In 1967 he made a solo debut with another famous artist, Johnny Pacheco. Mr. Quian’s album "Yo No Soy Mentiroso" went gold¹³ (Exhibit 10).

¹¹ Transcript 11/15/12, p. 5430-5441

¹² Mr. Coachman works as a Family Court Probation Officer.

¹³ <http://www.descarga.com/cgi-bin/db/archives/Profile81>

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Melvin considered 'Welo his father. Ms. Quian stated, "He was Melvin's rock." Please see photographs of Melvin's grandfather and his grandfather with family members (Exhibit 11). He was certainly more focused and more available to Melvin than his father. Melvin was encouraged to express himself through communication and music.

Melvin looked up to his grandfather learning one could make it out of a neighborhood as he did in Cuba. Welo taught Melvin to be loving, respectful and make positive out of the negative. Melvin stated that he learned from Welo through actions not words, because he didn't understand Welo's Spanish.

In 2006 Melvin's grandfather experienced symptoms leading to the devastating diagnosis of an inoperable malignant brain tumor. One month after Melvin's fourteenth birthday, Welo died. Melvin's grandfather's death was a devastating blow to Melvin. He did not rebound. Following all the previous life stressors discussed, Melvin finally gave up. This illustrates a defense mechanism to keep him together after too many traumas affecting him and his family. After Welo's death, Melvin did not grieve or speak about this loss. He didn't cry at the wake. He walked outside the church and left. The songs he sang with his grandfather have now faded from his memory.

Processing his grandfather's death at fourteen years old, Melvin had shown clinical signs of depression and anxiety. He was never treated. Ms. Quian blamed herself for not seeking him treatment. Ms. Quian fears she is responsible for Melvin's rebellious behavior stemming from his loss of his grandfather and his failure to address his grief.

Following Melvin's father's traumas Melvin witnessing death in his community, and his grandfather's death, a defense mechanism kicked in: withdrawal. Melvin thoughtfully and insightfully explained to the undersigned, "I draw away, that's how I cope." Melvin wasn't

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embarrassed as he articulated how he reacted to trauma. He stated that he believed there was never a reason to cry and he should always prepare for the worst.

Melvin reported to the undersigned there were no problems effecting his childhood. Clearly he was putting on emotional armor. Melvin is loyal to his family's privacy and proud of his neighborhood. South Bronx was all he knew, and didn't want to put the blame anywhere.

While withdrawing is a defense used by teens, it is often misread as antisocial behavior. A therapist at Goshen noted, "As the man of the house, Melvin withheld much information during sessions. During mental health screenings he states there were no problems stemming from a chaotic upbringing. However, during an interview with Melvin's mother, Ms. Quian shared that her father's death, lead to Melvin's decline." The clinician continued, "It is essential for Melvin to process anger and grief for his deceased grandpa. His mother reports family dysfunction that may have contributed to antisocial acts and affiliations... [Positive] social skills will stop his communication patterns, inappropriate posturing and mannerisms...Independence is essential and a necessary part of Melvin's treatment plan" (Exhibit 12---OCFS I, pp 18-21).

Three months following his grandfather's death, Melvin committed his first crime leading to his first arrest. He was fourteen years old.

MELVIN WAS SOCIALLY EDUCATED BEHIND BARS

The emotional and physical development of Melvin from fourteen to eighteen years old, beginning at Spofford, was influenced by rigid structure, a correctional facility culture, and intra-institution violence. Melvin learned he had to stand up for himself. He needed to present himself as tough. To appear vulnerable would have caused him to be a victim. While he struggled growing up behind prison walls, Melvin worked to create a persona that would allow him to be safe within the facilities. While his adolescent growing pains were tested, Melvin rose

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to the occasion. He always had his family support, as illustrated by his mother's and grandmother's presence throughout his incarceration and in this courtroom.

Following his stay at Spofford, in 2008 Melvin was transferred to Goshen Secure Center. Goshen is a secure center under the OCFS which has been recently criticized:

Records show that violent incidents have increased more than fivefold over the past five years. In 2007, 52 assaults were documented in the state's four secure centers [one of which is Goshen]; the number of assaults this year [2012] was up to 280 by December 14.

Commissioner Gladys Carrión set out to transform the corrections strategy to a therapeutic approach that included more rehabilitative programming, mental health treatment and limitations on physical restraint. Referred to as the 'sanctuary model,' it's a philosophy that addresses the complex behavioral and psychological needs of youths in state custody, and is nationally recognized by experts in juvenile justice as a way to lower recidivism.¹⁴

Melvin's belief in this holistic approach is evidenced below.

Goshen Secure Center: "Melvin is outstanding. Keep up the good work."

Melvin was confined at The Goshen Secure Center from July 22, 2008 to January 20, 2010. He was sixteen, turning seventeen. This is a time of changes for how teenagers think, feel, and interact with others. During this time, a teen develops a unique personality and opinions. Relationships with friends are still important, yet teens will have other interests as he/she develops a more clear sense of who he/she is. This is also an important time to prepare for more independence and responsibility...¹⁵

Melvin was taught on the streets that where you come from effects where you end up. However, while at Goshen he learned he had the ability to change; he worked on succeeding in a restricted atmosphere.

¹⁴ Santo, Alysia. *Times Union*.Com. "State's 'insecure' youth centers Assaults rise on workers and residents at OCFS juvenile detention sites," January 6, 2013.

¹⁵ CDC <http://www.cdc.gov/ncbddd/childdevelopment/positiveparenting/adolescence2.html>

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During a mental health session with a clinician it was assessed, “Melvin rationalized his addiction to negative behavior was due to his environment. He stated, ‘Living in the Bronx is bad because I can get anything. Guns, knives and weed. I have been harassed for standing in the street.’” (Exhibit 13 OCFS II-Goshen, p. 206-209).

Standing up to the challenge, it became clear that Melvin’s capacity to change was predicated related to who he is at the core: intelligent, helpful to others and insightful. Excerpts from teachers’ glowing reports illuminating Melvin’s behavioral strengths follow.

- 2/8/08 Melvin's strengths are noted as: Gets along with peers/teachers; Shows respect toward peers/teachers; participates in classroom activities; follows instructions. "Resident was on task." (Exhibit 14--Goshen p 23).
- 2/11/08 Melvin was very helpful. Keep up the good work." "Melvin is making a good effort in my math class and he is well behaved." Melvin shows a lot of respect to staff and teachers. He learns from his mistakes. (Exhibit 15--Goshen p 25, 27-28).
- 2/14/08 “Melvin had no problems today in school. Completed all assignments and followed directives." Melvin received a certificate of academic recognition for Biology/Living Environment. "Great Job!" Melvin receives a certificate of achievement for "Women's Project and Productions...Ten Centuries of Women Playwrights." (Exhibit 16--Goshen p 29, 102, 103)
- 2/15/08 Melvin’s student assessment reveals that he receives the highest rate (#5-resounding yes) in the following: Has a positive attitude toward school; Participates alertly and daily in classroom activities; He received an "emphatic no" for “is a distraction to others in the class.” "Melvin has been doing an excellent job mature and responsible in behavior." (Exhibit 17--Goshen, p 30, 32)
- 3/5/08 Melvin’s student assessment reveals that he receives the highest rate (#5-resounding yes) in the following: Has a positive attitude toward school; Participates alertly and daily in classroom activities; "Melvin has been making good effort lately and behaving as well." (Exhibit 18 --Goshen, p 11, 31)
- 3/6/08 Melvin "was very cooperative toward schools (sic) rules." (Exhibit 19--Goshen, p 13)
- 3/7/08 Melvin's student assessment reveals that he receives the highest rate (#5-resounding yes) in every category. Plus “outstanding” is added. "Melvin works competently in both classes; recently serving as a (illegible) assistant for a play

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written by the class; intellectually curious and academically motivated." (Exhibit 20--Goshen, p 14-15)

- 3/10/08 Melvin's strengths are noted as: Gets along with peers/teachers; Shows respect toward peers/teachers; Initiates assisting in the classroom; participates in classroom activities; completes assignments; follows instructions; is cooperative and considerate toward the learning process "Melvin did well and maintained good behavior throughout the day." (Exhibit 21--Goshen, p 20)

"Melvin is a good role model for his peers."

From August 26, 2008 to November 26, 2009, from the ages of sixteen to seventeen, Melvin received 17 positive behavior reports. Melvin received "Complies or Exceeds in all categories" 19 times in categories such as:

- self-discipline and interpersonal relationships
- telling the truth;
- accepting advice and feedback from staff;
- attempting to establish pro-social relationships with peer;
- demonstrating some positive leadership skills;
- establishing some positive interpersonal relationships with peers and adults;
- obeying laws and comply with facility rules;
- using non-violent alternatives for resolving conflicts;
- acknowledging responsibility for rule violations; and using the problem solving steps (Exhibit 22--OCFS II-Goshen, pp16-19, 25-26, 63-71, 73-78).

MELVIN WAS ACADEMICALLY EDUCATED BEHIND BARS

Melvin is "a bright student."

Teachers at Goshen raved about 16-year-old Melvin's academic promise. Excerpts follow

- "Strengths: a bright student, a very smart student"
- "Now that Melvin has his GED it would be nice if he would use his abilities to help others in science"
- "Melvin was tutoring student who was self-programming"
- "Resident earned his GED at times he works along with class in SS. Congratulations!"
- "Melvin has been acting much more mature, tutoring others..."

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- “Melvin is a good kid”
- Melvin receives complies or exceeds in all categories except seeks clarification from staff about program expectations.
- Woodcock Johnson scores: reading 13.0; writing 13.0, math 13.0
- Strengths: Excellent student, does work, good kid.
- Strengths: a bright student SS. Very smart student.
- Now that Melvin has his GED it would be nice if he would use his abilities to help others in science.
- Melvin was tutoring student who was self-programming.
- Resident earned his GED at times he works along with class in SS. Congratulations!
- Melvin has been acting much more mature, tutoring others...The English class is reading Lost in Yonkers
- Melvin processes information quickly and retains information clearly. LH Van Deusen signs. (Exhibit 8 OCFS II – Goshen, p.27, OCFS I, p. 2)

“Melvin is an intelligent young man who should know no boundaries. His personality is an asset”

- Melvin has a great personality. Follows along with the class program with questions. A bright student. Extremely high Woodcock Johnson scores, willing to tutor maybe? But orientation stage still? One of the fastest typers (sic) in the school. Mr. Colón is quick to offer assistance to fellow classmates (Exhibit 23 OCFS II-Goshen, p. 52).
- Ms. Banders-Pehrson (English Lit, creative writing) gives Melvin the highest scores. "Great participation in all class activities." (Exhibit 24--Goshen, p 54)
- Melvin is an intelligent young man who should know no boundaries. Melvin is enrolled in the computer technology vocational training classes where he is a smart student and his personality is an asset. He follows directions and class guidelines most of the time. (Exhibit 25--OCFS I-Goshen, p. 32).
- Strengths: Melvin is a bright student. Melvin is a very smart student in computer technology. His personality is an asset. Melvin needs more working progress toward addressing focus items. Progress toward release plan: It would be great if Melvin would tutor students to help those who could use it. (OCFS II-Exhibit 26--Goshen, p. 29).
- Melvin receives his GED. Language arts/writing: 450; Social Studies 450; Science 510; Language arts/reading: 480; math 460; Total 2350 (Exhibit 27—Goshen p 105).

As noted above, Melvin developed socially and academically behind bars. He was book smart and socially developing off the street. As he approached the age of eighteen he felt it was

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time to move on and grow up. Since he was being raised behind bars he wanted to move from a juvenile facility to more challenging an adult facility.

“ MELVIN SEES HIMSELF AS AN ADULT”

Melvin was incarcerated in Brookwood Secure Center on January 20, 2010. On April 13, 2010, six days before Melvin’s eighteenth birthday he wanted to be removed from Juvenile Centers and placed into Department of Corrections (DOCS) which housed adults. While evaluating Melvin, a therapist noted: “Placement in DOCS at this time will not unreasonably deprive Melvin on any needed [mental health] services, educational or vocation. Melvin wanted to be out of the [Juvenile Justice System]. He has advocated for placement in DOCS to avoid further stress and possible criminal behavior resulting from his continued placement at [Brookwood Secure Center]. He sees himself as an adult and wished to be treated like an adult” (Exhibit 28 OCFS I, p. 15). Coming from his role as man of the house, Melvin was a seventeen-year-old kid when he sought to be treated like an adult within the criminal justice system. Melvin constantly illustrated his tumultuous childhood.

“It was amazing Melvin survived.”

The undersigned called Phyllis Brunson-Sutton,¹⁶ counselor, Goshen Secure Center, and left a message indicating the reason for the call. She called back about a week later acknowledging that she didn’t call back right away. She shared that she didn’t sleep well for a couple of days after learning about Melvin’s pending murder case from the undersigned. Having known Melvin, his mother, father and grandmother, Ms. Brunson-Sutton remarked that Melvin is “something else.” She commented that it was her experience, “Some kids are thrown away. Not Melvin. He expressed normal teen responses”.

¹⁶ Ms. Brunson-Sutton has indicated her pain learning of the case and now refuses to cooperate with the undersigned.

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She described her work with Melvin, “When he fought rules he took responsibility. His growing pains were affected by growing up inside walls”. Ms. Brunson-Sutton discussed the savage demise of the South Bronx. She painted a picture for the undersigned, stating “Growing up in the Bronx...it was amazing that Melvin survived.”

“I remember Melvin well.”

Gregory Joyner,¹⁷ Assistant Director of Goshen Secure Facility stated he knew Melvin well from 2008-2011, from the ages of sixteen to nineteen years old. Mr. Joyner brought Melvin the Bible and novels to read from his home, which he felt would support and build on what Melvin was learning.

WAS FACEBOOK THE REAL MELVIN?

Does social networking illustrate real individuals or true relationships? A recently acclaimed documentary film, “Catfish” was made to exemplify young people who pursued online friendships and romantic relationships which led to an unexpected series of discoveries. The people weren’t who they said they were. It was shown that Facebook social networking along with the associated bravado especially among adolescents lead to fake relationships in a fantasy world.¹⁸ Social networking hovers over the representation of how the user wanted to be perceived.

It has been shown that the way people represent themselves on Facebook and YouTube aren’t necessarily who they are; it is their presentation of how they want to be seen.

¹⁷ Mr. Joyner refuses to speak further to the undersigned.

¹⁸ <http://www.imdb.com/title/tt1584016/>

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Nadkarni and Hofmann (2012) investigated the psychological factors that drive Facebook usage. Their review of the research found that is the fundamental desire to belong. Humans are designed to connect with others as well to feel accepted by them. Facebook has been found to promote connections (Sheldon et al., 2011). Feeling disconnected initially motivates individuals to use the site (essentially as a coping mechanism), and in turn, the more they use it the more connections they gain.

The second striving Facebook responds to is self-presentation, in which users fashion ideal — rather than accurate — versions of themselves through their profiles. This is manifest in, for example, the number of “friends” in their network and photographs. As such, Facebook personas that are presented online may be a more socially appealing “self” that is aspired to in reality, but one that is not yet realized (Zhao et al., 2008).¹⁹

Ms. Quian’s thoughts were that Melly was bullied and pressured by the streets at a young age, causing Melly to “become” a different person. She saw Melly “put up a front so no one would bother him, but it wasn’t who he was.”

Conduct disorder is more common among boys than girls, with studies indicating that the rate among boys in the general population ranges from 6% to 16% while the rate among girls ranges from 2% to 9%. Among both boys and girls, conduct disorder is one of the disorders most frequently diagnosed in mental health settings.²⁰ Melvin was diagnosed with conduct disorder at the age of 16 while at Goshen. Blaming Melvin for his oppositional behavior should be properly viewed as response to his childhood traumas.

RESPONSE TO TRAUMA

Melvin saw friends shot. He saw dead bodies in the street. Those events lead to trauma. Those are traumatic events that can lead to PTSD.

¹⁹ Vinita Mehta, Ph.D., Ed.M. “Why Does Using Facebook Feel So Good?” *Psychology Today* April 29, 2012.

²⁰ Mental Health America <http://www.nmha.org/go/conduct-disorder>

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As a witness to violence inside and outside the home, trauma is proposed as a key to understanding the development and persistence of conduct disorder, in conjunction with other contributing factors. Trauma history is ubiquitous in the conduct disordered population, *and trauma effects can help to account for many features of conduct disorder, including lack of empathy, impulsivity, anger, acting-out, and resistance to treatment* (emphasis mine). The current standard of care fails to fully address trauma, which may partially explain the low success rate of extant treatment approaches.²¹

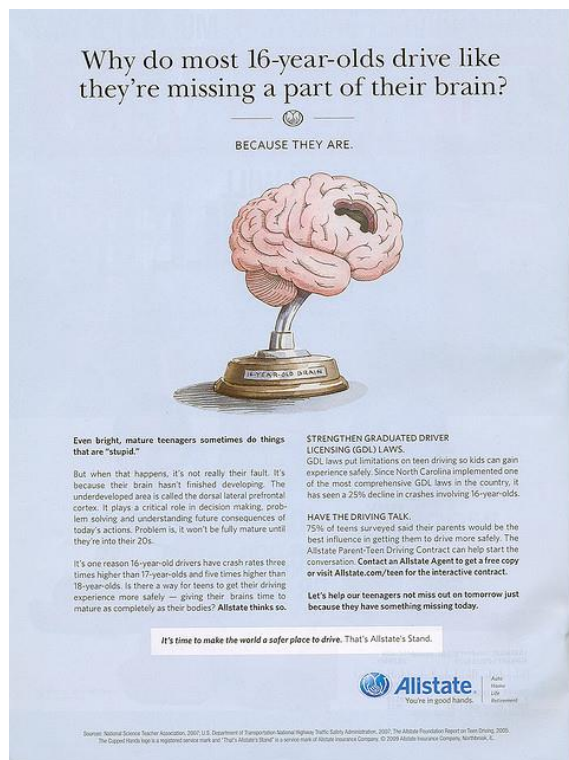
In warlike experiences soldiers who went through the unsettling life experiences that Melvin lived through would often receive a diagnosis PTSD. For children like Melvin, to claim the unsettling nature of his environmental experiences to be one similar to a wartime experience would be politically charged but accurate. Instead, Melvin is considered responsible for his misconduct, without consideration of his childhood traumas and receives a diagnosis of Conduct Disorder. More accurately, he should have been diagnosed with PTSD.

²¹ Journal of Aggression, Maltreatment & Trauma Volume 6, Issue 1, 2002

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ADOLESCENT BRAIN DEVELOPMENT

Allstate says it best: 16-year-olds are missing a part of their brain.



Melvin Colòn was 19 years old at the time of the offenses. Massive research has been done leading to volumes written on the adolescent brain development not being finished which affects teens' behavior. As Allstate states, part of a teenager's brain is missing. In addition to the layperson's description of brain development, much research has been done.

Ask any parent of a teen and they will tell you that their teen's brain is not operating at full capacity. As it turns out, those parents are right. Researchers are finding evidence to support that teens' brains are underdeveloped.

A longitudinal study conducted by NIMH using MRI found that the prefrontal cortex (where the brain's executive functions such as planning, reasoning, mood regulation and problem solving occur) is not fully developed until young adulthood. Instead teens rely on the part of the limbic system that is associated with instinctive gut reactions. In other words, teens are bright and come up with creative and inventive ideas, but do not have access to the part of the brain that tells them if they are good ideas or not.²²

²² Kuehn, Laura. "Understanding Your Teen's Brain: What Were You Thinking?" March 2, 2011

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Teens easily influenced by their environment are more prone to impulsive behavior. This lack of brain development affected the Supreme Court's 2005 decision, *Roper v Simmons*, and ruling that the death penalty for juveniles was unconstitutional. Their decision explicitly took into consideration that "part of the brain involved in behavior control continues to mature through late adolescence."²³ Teens' poor decision making and recklessness are voluminously explained by the teens' brains as works in progress.

Melvin had just turned nineteen years old at the time of the offenses. As the excerpts showed above, scientists did research in all formats for brain development which led to the result that unfinished brain development affecting adolescents' behavior is not in question.

MELVIN's PAST, PRESENT and FUTURE

At a very young age, in public school, Melvin learned that that his choices would probably be either death or jail. While developing socially and academically behind bars, he discovered a third option: giving other kids hope that life could have meaning. He would like, of course to start with his brother, Malik. Malik is entering the 11th grade in September at the Bronx Leadership Academy II. This school merged three campuses into one foundation about 3 years ago. Melvin did not have this opportunity.

²³ Monterosso, John and Barry Schwartz. *The New York Times Sunday Review*. "Did Your Brain Make you Do It?" July 27, 2012.

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Malik must wear a “uniform” to school: khaki, grey, black or blue pants, a white button down shirt and a tie. Ms. Quian purchased clip on ties as she did not know how to affix his tie.

The letters to the Court are included as Exhibit 29. They are written by Edilia Quian, Melvin’s mother and his aunt, Teasha Young.

On April 19, 2013, Melvin turned twenty-one years old. We argue that giving Melvin a life sentence at twenty-one years old gives up on him. Melvin needs, and frankly deserves, hope to re-enter society. Should we as a society cast Melvin aside and say that his conduct as a teenager was such to take away any chance that by good deeds he could ever gain freedom? While Melvin is incarcerated, he hopes to pursue an education in Psychology. He explains he wants “to explore what affects peoples’ behavior” and how to help them if their behavior has been negatively affected.

Melvin’s environment has been an ugly, negative force. He has not now overcome it, but should we say it is over, he has lost any chance of changing, of being valuable? Can it be said that he should have no hope for any future?

Melvin’s mother did her best. She worked hard to raise two young sons in an urban demographic war zone. She was the caretaker for her disabled husband. Melvin also did as well as he could. What many may not see this way because of the outcome, Melvin did as well as he could with forces weighing on him: poverty, normalized pervasive violence, death of his peers, a limited father, and the death of a mentor, his grandfather. These are not excuses but they are explanations, separating what Melvin was convicted of versus who he could have been.

Melvin’s core is not yet fully developed. He is just a kid.

What Melvin learned in Juvenile Secure Facilities and Correctional Facilities was how to change his behavior and help people. Probation Officer Walter Quinn who interviewed Melvin for his report may not have known Melvin was being sentenced to life in prison. He asked

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Melvin a question about his future. PO Quinn posed, “What do you want to do when you get out?” Melvin responded, “I want to help kids”. While Melvin knew he wasn’t being released, he wanted to answer the question without hesitation and with his heart.

Melvin wants to help kids. He has the ability. As documented throughout his incarceration history, by neutral sources, Melvin was deemed a role model who respects teachers and peers. He learns from his mistakes. Melvin can exhibit mature and responsible behavior, meeting the highest rating in most areas.

Melvin tutored his peers. He mentored them, and encouraged them not to be so aggressive. He stands as a role model for his brother Malik who so far has avoided the pitfalls his older brother has stepped in.

May this Court, in the interest of justice, give Melvin Colón a hope someday for a life outside of prison. A life sentence for this kid is too long. It is more than is “necessary” in this case.

Respectfully Submitted,

/s/ *Lisa Orloff*
Lisa Orloff, LMSW
Mitigation Specialist
License No: 046613
Date of Licensure 5/28/93